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15 NOVO NORDISK INC.

16 **UNITED STATES DISTRICT COURT**  
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 IN RE INCRETIN-BASED  
19 THERAPIES PRODUCTS  
20 LIABILITY LITIGATION

21 *This Document Relates to All Cases*

Case No. 3:13-MD-02452-AJB-MDD

**DEFENDANT NOVO NORDISK  
INC.'S NOTICE OF MOTION AND  
MOTION TO DISQUALIFY DR. G.  
ALEXANDER FLEMING AS AN  
EXPERT WITNESS FOR  
PLAINTIFFS AND STRIKE HIS  
REPORT ON PREEMPTION**

Judge: Hon. Anthony J. Battaglia  
Ctmm: 3B  
Hrg: March 12, 2015  
Time: 2:00 pm

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 12, 2015 at 2:00 p.m., or as soon  
3 thereafter as counsel may be heard, in Courtroom 3B, Edward J. Schwartz  
4 Courthouse, United States District Court, District of Southern California, 221 West  
5 Broadway, San Diego, CA 92101, before the Honorable Anthony J. Battaglia,  
6 Defendant Novo Nordisk Inc. (“Novo”) will and hereby does move for an Order  
7 disqualifying Dr. G. Alexander Fleming as an expert witness for Plaintiffs and  
8 striking his report on preemption. Novo moves to disqualify Dr. Fleming on the  
9 ground that Dr. Fleming is irreparably conflicted from acting as an expert witness  
10 for Plaintiffs for the following reasons:

11 First, due to his extensive confidential consulting relationship with Novo, Dr.  
12 Fleming was privy to a broad-range of highly sensitive information that is relevant  
13 to both the opinions in his report and this litigation generally. Accordingly, it  
14 would be unfairly prejudicial to Novo for Dr. Fleming to serve as Plaintiffs’ expert  
15 in this litigation, and inequitable to allow him to benefit financially from breaching  
16 confidentiality covenants into which he voluntarily entered.

17 Second, Dr. Fleming currently is a direct market competitor of Novo in the  
18 diabetes treatment community. As such, Plaintiffs’ counsel violated this Court’s  
19 Protective Order by showing Dr. Fleming confidential documents without  
20 providing Novo the required fourteen days’ notice and an opportunity to object.

21 This motion is based upon this Notice of Motion and Motion, the  
22 accompanying Memorandum of Points and Authorities, the Declaration of Heidi  
23 Levine and exhibits thereto, all pleadings and papers on file in this action, oral

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1 argument as permitted by the Court, and any such other matters that the Court  
2 deems appropriate.

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4 Dated: January 16, 2015

DLA PIPER LLP (US)

5 By: /s/ Christopher M. Young  
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10 *Attorneys for Defendant Novo Nordisk*  
11 *Inc.*  
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